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March 25, 2003

To: Supervisor Yvonne Brathwaite Burke, Chair
Supervisor Gloria Molina
Supervisor Zev Yaroslavsky
Supervisor Don Knabe
Supervisor Michael D. Antonovich

From: David E. Janssen
Chief Administrative Officer

MOTION TO SUPPORT AB 936 (REYES) -- BABY STALKING (ITEM NO. 19, AGENDA OF MARCH 25, 2003)

Item No. 19 on the March 25, 2003 Agenda is a motion by Supervisor Antonovich to support AB 936 (Reyes) and to send a five signature letter of support to Governor Davis and the State Legislature.

AB 936 would create the crime of baby stalking. A person would be guilty of baby stalking if they willfully and maliciously, with the intent to abduct an infant: 1) followed the infant, parent or guardian, 2) loitered within a hospital in an area that is devoted to the delivery or care of infants, or 3) impersonated a doctor, nurse, hospital employee, patient or acquaintance of a patient. The bill adds this new crime to the Penal Code in the Section that defines the crime of stalking.

The measure would make the crime of baby stalking punishable by up to a year in a county jail, a fine of up to \$1,000, or both. For a second violation, a person may be punished by a year in a county jail, a fine of up to \$10,000, or both; or they may be sentenced to State prison. If the court grants probation, or if imprisonment is suspended, the court must require participation in counseling unless the court makes a finding of good cause not to impose the counseling requirement.

The District Attorney (DA) indicates in a preliminary analysis that the current stalking statute has been tested for constitutionality and requires that three elements must be found: 1) a person must willfully, maliciously and repeatedly follow or harass another person, 2) there must be a credible threat and 3) the person who made the threat did so with the specific intent to place the other person in fear for his safety. According to the DA, AB 936 does not contain the necessary elements to prove stalking.

The DA also indicated that the intent to abduct an infant as defined in AB 936 sets a high standard of proof and will be difficult to substantiate. If this higher standard can be met, however, the higher crime of kidnapping, which is a felony, could be charged instead of the first time misdemeanor offense required in AB 936.

AB 936 is sponsored by the Community Medical Centers in Fresno. The author's fact sheet indicates that between 1983 and 1999 there have been 187 reported infant abductions from hospitals nationwide, 29 of them in California, and that Community Medical Centers encounters about one potential stalker per month in their facilities. They contend that this legislation is needed because there is nothing in the State Penal Code that specifically protects infants against potential abductions, and that this law will help make infant stalking law consistent with adult stalking law.

The Sheriff does not have a position on the bill. **Because there is no existing Board policy, a position on AB 936 is a matter for Board policy determination.**

AB 936 is awaiting a hearing date in the Assembly Public Safety Committee. There is no support or opposition on record.

DEJ:GK
JL:ib

c: Executive Officer, Board of Supervisors
 County Counsel
 District Attorney
 Sheriff